IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS WEDNESDAY, THE 11TH DAY OF JANUARY, 2023.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1986/2015

BETWEEN:

1. **XTREME IDEAS LIMITED**
2. **ODESOMI MICHEAL ADEDIWURA** } **..... CLAIMANTS**
3. **PONYAH IBRAHIM**

AND

1. **FEDERAL CAPITAL TERRITORY AUTHORITY**
2. **HON. MINISTER FCT** } **.. DEFENDANTS**
3. **ALH. MUHAMMADU IBN ABALI**
   (For and on behalf of Himself and all Heirs of Late Alhaji Abali Muhammadu)

JUDGMENT

By an Amended Writ of Summons and Statement of claim dated 4th March, 2020 and filed at the Registry of this Court on 6th March, 2020, the claimants' claims against the Defendants are as follows:

1. **A DECLARATION that the plaintiff is the Bonafide lawful allottee of Plot 218, measuring 2, 257.42 meter square within Katampe District B7 in the Federal Capital Territory.**

2. **AN ORDER of this court directing the 1st and 2nd Defendants to issue a Certificate of Occupancy in respect of Plot 218, Katampe District B7 to the plaintiff and do every ancillary (sic) to the plaintiffs' rights over the said plot of land.**

3. **And for such order as the court may deem fit to make in the circumstance.**

It may be relevant to state that this action initially involved only the 1st Plaintiff and 1st and 2nd Defendants. The 1st plaintiff then applied to join 2nd and 3rd Plaintiffs as co-plaintiffs which was granted on **27th January, 2016**. The 1st and 2nd Defendants also similarly filed an application to join the 3rd defendant which was granted on 11th October, 2016.

From the records of the court, the defendants were all served with the originating court processes. The 1st and 2nd defendants jointly filed an Amended statement of defence on the 27th September, 2019. The 3rd defendant on the other hand filed a statement of defence and counter-claim to the action dated 16th September, 2020 and filed same date at the Court's Registry. The 3rd defendant set up a counter-claim against both the plaintiffs and 1st and 2nd defendants (now 4th and 5th Defendants in the counter-claim) thus:

i. **A DECLARATION that the Certificate of Occupancy No. 107w-17366-7406r-c74cu-10 granted to the counter-claimant by the office of the Federal Capital Territory Administration (FCTA) and the Minister of the Federal Capital Territory (FCT) over the piece of land known as and situate at Plot No. 218, Katampe District, Cadastral Zone B7, FCT, Abuja with File No: B010710, is valid and subsisting.**

ii. **A DECLARATION that the illegal possession of the land by the 1st defendant to this counter-claim constitutes a trespass to the said piece of land.**

iii. **AN AWARD of N10, 000, 000 (Ten Million Naira) damages against the 1st defendant for the trespass hitherto committed on the land.**

iv. **A PERPETUAL INJUNCTION of this Honourable court restraining the 1st to 3rd defendants to this counter-claim, their heirs, agents, privies, allies, representatives e.t.c from further trespassing on the said land in anyway whatsoever or doing anything that could in anyway breach the counter-claimant's right to quiet and peaceable possession of the land.**

v. AN ORDER OF POSSESSION granting an exclusive possession of the land, to wit: Plot 218, Katampe District, Cadastral Zone B7, FCT Abuja to the counter-claimant.

vi. THE COST of this suit which is N2, 000, 000 (Two Million Naira) only.

IN THE ALTERNATIVE:

vii. AN ORDER of this Honourable Court awarding the sum of One Hundred Million Naira (N100, 000, 000) only against the Federal Capital Territory Administration and the Minister of FCT (the 1st and 2nd defendants to this counter-claim) being the current value of the land subject matter of this suit, validly allocated to the counter-claimant by their offices.

viii. THE COST of this suit which is N2, 000, 000 (Two Million Naira) only against the 1st and 2nd defendants to this counter-claim.

It is on record that the claimants in reaction to the 3rd defendant's counter claim filed a Reply/Defence to the counter-claim dated 23rd October, 2020. The 4th and 5th Defendants to the counter claim also filed a statement of defence to the counter-claim of 3rd Defendant on 14th January, 2021. In response, the 3rd Defendant/counter-claimant filed a Reply to the 4th and 5th Defence to his counter-claim on 18th February, 2021.

Hearing then commenced. In proof of their case, the claimants called only one witness, **Odinakaonye Lagi** who testified as **PW1**. She deposed to a 5 paragraphs witness deposition on oath which she adopted at the hearing. She tendered in evidence the following documents to wit:

1. The Power of Attorney between Ponya Ibrahim and Xtreme Idea Ltd (1st plaintiff) was admitted as **Exhibit P1**.

2. Receipt for Registration of Power of Attorney dated 23rd July, 2005 was admitted as **Exhibit P2**.

3. Deposit slip/receipt payment for recertification dated 29th April, 2005 was admitted as **Exhibit P3**.

4. Letter to the Minister, FCT, titled "Application to Register Power of Attorney" dated 23rd July, 2009 was admitted as **Exhibit P4**.

5. Letter to the Director of Lands dated 26th May, 2011 was admitted as **Exhibit P5**.

The right of 1st and 2nd defendants to cross-examine the PW1 was foreclosed on the application of the plaintiffs' counsel due to absence of the 1st and 2nd defendants counsel.

The 3rd defendant did not cross-examine PW1.

With the evidence of PW1, the plaintiffs formally closed their case.

The 1st and 2nd Defendants also called only one witness. **Chanuwa Gayus Hamman**, a staff of the Department of Lands Administration, an Agency under FCTA testified as **DW1**. She deposed to two (2) witness depositions dated 27th September, 2019 and 14th January, 2021 which she adopted at the hearing. She tendered in evidence the following documents:

1. The Certified True Copy (C.T.C) of Offer of Terms of Grant/Conveyance of Approval to 2nd plaintiff dated 28th January, 1999 was admitted as **Exhibit D1**.

2. C.T.C of Acceptance of Offer of Grant of Right of Occupancy No. MFCT/LA/97/05 561 (Exhibit D1) was admitted in evidence as **Exhibit D2**.

DW1 was then cross-examined by both counsel to the 3rd Defendant/Counter-claimant and counsel to the claimants and with her evidence, the 1st and 2nd defendants closed their case.

The 3rd Defendant/Counter-claimant on their part also called only one witness. **Alhaji Musa Hussaini**, Chief Driver of Emir of Fika, Fika Emirate Council Potiskum, a senior member of staff of the late Alhaji Abali Muhammadu testified as **DW2**. He deposed to a witness deposition dated 18th October, 2021 which he adopted at the hearing. He tendered in evidence the following documents:

1. Certified True Copy (C.T.C) of Offer of Terms of Grant/Conveyance of Approval dated 9th April, 2002 was admitted as **Exhibit D3**.

2. Certified True Copy (C.T.C) of Acceptance of Offer of Grant of Right of Occupancy dated 24th May, 2002 was admitted as **Exhibit D4**.

3. Certified True Copy of Certificate of Occupancy together with C.T.C of the Survey Plan over Plot 218 was admitted as **Exhibit D5**.

DW2 was then cross-examined by counsel to 1st and 2nd Defendants and counsel to the claimants.

With his evidence, the 3rd Defendant/Counter-claimant closed their case.

At the close of evidence, parties were ordered to file and exchange final written addresses. On the Record, the 1st and 2nd Defendants chose or elected not to file a final written address within time as allowed by the Rules of Court.

The final address of 3rd Defendant/Counter-claimant was filed on 3rd June, 2022.

In the address, two (2) issues were raised as arising for determination as follows:

1. **Whether the plaintiffs or the counter-claimant have proven their case to the satisfaction of the law to entitle them to the reliefs claimed or counter-claimed respectively?**

2. **Whether the plaintiffs are not required to first prove their title successfully in accordance with the law before priority of interest can be applicable?**

The claimants on their part equally identified two (2) issues as arising for determination as follows:

1. **Whether the plaintiffs have successfully proved their case in accordance with law and are entitled to the Reliefs claimed?**

2. **Whether from the facts and evidence in this case, the 3rd defendant/counter-claimant can sustain the claims in his counter-claim against the plaintiffs?**

I have given a careful and insightful consideration to all the issues as distilled by parties in relation to the pleadings and evidenced adduced at the hearing. The issues may have been differently worded but they seem to me in substance to be in *parimateria*. On the pleadings which has streamlined the facts and or issues in dispute, the central key issue on which parties are at a consensus

adidem relates to the contested claim of ownership the claimant and 3rd defendant made over Plot No. 218, Katampe District (hereinafter referred to as the disputed plot or just Plot No 218).

The **1st and 2nd defendants** and the issuing authority of all lands in Abuja, FCT posits that there was **a double allocation of the said plot 218** but that the allocation to claimant is first in time and earlier than that of 3rd defendant/counter-claimant. The claimants thus seek a pronouncement affirming their ownership of the disputed plot. Within this same factual construct, the 3rd defendant has situated his counter-claim also seeking a pronouncement on the validity of his allocation.

All these contested issues are a direct function of whether the parties have succeeded in discharging the burden of proof placed on them by law in proof of these contending assertions within the required legal threshold.

Flowing from the above, there is thus **a claim** by plaintiffs and **counter-claim** by the 3rd defendant. It is trite law that for all intents and purposes, a counter claim is a separate, independent and distinct action and the counter claimant like the plaintiff in an action must prove his case against the person counter claimed before obtaining judgment. See **Jeric Nig. Ltd V Union Bank (2007) 7 WRN 1 at 18; Shettimari V Nwokoye (1991) 9 NWLR (pt.213) 66 at 71.**

In view of this settled state of the law, both the plaintiff and the 3rd defendant/counter-claimant have the burden of proving their claim and counter-claim respectively. This being so, therefore, the issues for determination in this action can be condensed and be more succinctly encapsulated in the following issues as follows:

1. **Whether the claimants have established on a preponderance of evidence that they are entitled to all or any of the Reliefs claimed?**

2. **Whether the 3rd defendant/counter-claimant has equally established on a preponderance of evidence, his entitlement to any or all of the Reliefs claimed?**

The above issues shall be taken together and conveniently in my opinion covers all the issues raised by parties. The issues thus distilled by court are not raised in the alternative but cumulatively with the issues raised by parties. See **Sanusi V Amoyegun (1992) 4 NWLR.**

Let me quickly make the point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their cases. At the conclusion of trial proper, the real issue(s) which the court would ultimately resolve manifest. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of these critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **Overseas Construction Ltd V. Creek Enterprises Ltd &Anor (1985)3 N.W.L.R (pt13)407 at 418,** the Supreme Court instructively stated as follows:

"By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the relief he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff's case collapses and the defendant wins."

It is therefore guided by the above wise exhortation that I would now proceed to determine the case based on the issues formulated by court and also consider the evidence and submissions of learned counsel on both sides of the aisle. In furtherance of the foregoing, I have carefully read the very well written addresses filed by parties respectively. I shall in this course of this judgment and where necessary or relevant, refer to submissions made by counsel and resolving whatever issue(s) arising therefrom.

Now to the substance. I had stated that the two (2) issues distilled by court as arising for determination above will be taken together. Indeed at the commencement of this judgment, I had stated that there is a claim by plaintiffs and a counter-claim by 3rd defendant. So these identified parties have the evidential burden of establishing their claims and succeeding on the strength of their cases as opposed to the weakness of the case of the other party. See **Kodilinye V Odu (1935) 2 WACA 336 at 337; Fagunwa V Adibi (2004) 17 NWLR (pt.903) 544 at 568; Nsirim V Nsirim (2002) 12 WRN 1 at 14.**

This principle is however subject to the qualification that a claimant is entitled to take advantage of any element in the case of his opponent that strengthens his own cause. What this means is that it is not enough to merely assert that the case of the opponent is weak; there must be something of positive benefit to the

claimant in the case of the opponent. See **Uchendu V Ogboni (1999) 5 N.W.L.R (pt.603) 337.** Accordingly, it is important to add that where the claimant fails to discharge the onus cast on him by law, the weakness of the case of the opponent will not avail him and the proper judgment is for the adversary or opponent. See **Elias V Omo-Bare (1982) NSCC 92 at 100 and Kodilinye V Odu (supra).**

It is therefore to the pleadings which has precisely streamlined the issues and facts in dispute and the evidence that we must now beam a critical judicial search light in resolving the contested assertions.

In this case, the claimant filed a **15 paragraphs Amended statement of claim** which forms part of the records of court. The evidence of their sole witness is largely within the structure of the claim and the Reply and defence to the counter-claim of 3rd defendant.

The 1st and 2nd defendants on their part filed a 5 paragraphs Amended statement of defence and a defence to counter claim of 3rd defendant which also forms part of the Record of court and the evidence of their sole witness is similarly within the purview of the facts averred.

Finally the 3rd defendant filed a 9 paragraphs statement of defence and also a 9 paragraphs counter-claim together with a reply to the 4th and 5th defendants defence to his counter claim. The evidence of his sole witness is similarly largely within the body of facts averred in his pleadings.

I shall in the course of this judgment refer to specific paragraphs of the pleadings, where necessary, to underscore any relevant point. Indeed in this judgment I will deliberately and in extenso refer to the above pleadings of parties as it has clearly streamlined or delineated the issues subject of the extant inquiry. The importance of parties' pleadings need not be over-emphasised because the attention of court as well as parties is essentially focused on it as being the fundamental nucleus around which the case of parties revolve throughout the various trial stages. The respective cases of parties can only be considered in the light of the pleadings and ultimately the quality and probative value of the evidence led in support.

Before going into the merits, let me state some relevant principles that will guide our evaluation of evidence. It is settled principle of general application that whoever desires any court to give judgment as to any legal right or liability

dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) Evidence Act.** By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing co. ltd. V. Bon Ltd. (2002) 11 N.W.L.R (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 N.W.L.R (pt 316)182 AT 200.**

I must also add here that under our civil jurisprudence, the burden of proof has two connotations.

1. The burden of proof as a matter of law and pleading that is the burden of establishing a case by preponderance of evidence or beyond reasonable doubt as the case may be;

2. The burden of proof in the sense of adducing evidence.

The first burden is fixed at the beginning of the trial on the state of the pleadings and remains unchanged and never shifting. Here when all evidence is in and the party who has this burden has not discharged it, the decision goes against him.

The burden of proof in the second sense may shift accordingly as one scale of evidence or the other preponderates. The onus in this sense rests upon the party who would fail if no evidence at all or no more evidence, as the case may be were given on the other side. This is what is called the evidential burden of proof.

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more

evidence was adduced. See **Section 133(2) of the Evidence Act.** It is necessary to state these principles to allow for a proper direction and guidance as to the party on whom the burden of proof lies in all situations.

Being a matter involving disputation as to title to land, it is also important to situate the **five independent** ways of proving title to land as expounded by the Supreme Court in **Idundun V Okumagba (1976) 9 – 10 SC 221** as follows:

1. Title may be established by traditional evidence. This usually involves tracing the claimant's title to the original settler on the land in dispute.

2. A claimant may prove ownership of the land in dispute by production of documents of title. A right of occupancy evidenced by a certificate of occupancy affords a good example.

3. Title may be proved by acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant an inference that the claimant is the true owner of the disputed land. Such acts include farming on the whole or part of the land in dispute or selling, leasing and renting out a portion or all of the land in dispute.

4. A claimant may rely on acts of long possession and enjoyment of land as raising a presumption of ownership (in his or her favour) under **Section 146 of the Evidence Act**. This presumption is rebuttable by contrary evidence, such as evidence of a more traditional history or title documents that clearly fix ownership in the defendant.

5. A claimant may prove title to a disputed land by showing that he or she is in undisturbed or undisputed possession of an adjacent or connected land and the circumstances render it probable that as owner of such contiguous land he or she is also the owner of the land in dispute. This fifth method, like the fourth, is also premised on **Section 146 of the Evidence Act**.

See **Thompson V Arowolo (2003) 4 SC (pt.2) 108 at 155-156; Ngene V Igbo (2000) 4 NWLR (pt.651) 131.** These methods of proof operate both cumulatively and alternatively such that a party seeking a declaration of title to land is not bound to plead and prove more than one root of title to succeed but

he is eminently entitled to rely on more than one root of title. See **Ezukwu V Ukachukwu (2004) 17 NWLR (pt.902) 227 at 252.**

It is also important to note at the onset that some of the critical reliefs sought both in the substantive claim and counter claim are **declaratory** in nature. This being so, it is critical to state that declarations in law are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. It is therefore incumbent on the party claiming the declaration to satisfy the court by credible evidence that he is entitled to the declaration. See **Vincent Bello V. Magnus Eweka (1981) 1 SC 101 at 182; Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262.** The point is that it would be futile when a declaratory relief is sought to seek refuge on the stance or position of parties in their pleadings. The court must be put in a commanding position by credible and convincing evidence at the hearing of the claimants' entitlement to the declaratory relief(s).

The above principles identified in some detail, provides broad legal and factual template as we shortly commence the inquiry into the contrasting claims of parties.

Now from the pleadings of parties which as earlier indicated has precisely streamlined the facts or issues in dispute, both the **claimants** and the 3rd **defendant counter-claimant** appear to found their respective claim of title on production of title documents. These title documents of both parties on the evidence appear to be predicated or derived from the same source, **the 1st and 2nd defendants**. Within the context of laws governing land tenure in the FCT, the 1st and 2nd defendants are the issuing authority of land allocations within the FCT. Their actions in this case is therefore critical in situating the validity of the case of the claimants and that of 3rd defendant/counter-claimant.

A convenient starting point is to understand the precise situational dynamic relating to the contested assertions of parties and the pleadings of parties appear to me to be a fair take off point. The case of claimant on the pleadings and the evidence is fairly straightforward. The case can be situated within the confines of the following relevant paragraphs as follows:

"7.The 1st Plaintiff acquired Plot No. 218, within Katampe District B7, measuring 2, 257.42 meters square from the 3rd Plaintiff of No. JG 66, Apata Street Jos, on the 25th of July, 2009 via a power of attorney dated

25th July, 2009. The said power of attorney is hereby annexed and will be relied upon.

8. **The Plaintiff avers that 3rd Plaintiff acquired the said plot of land from the 2nd plaintiff of Nigerian Customs, Audit unit, Wuse on the 18th of June 2003 via a power of attorney dated the same day. A copy of the said power of attorney is hereby attached and will be relied upon. The Defendants are put on notice to produce the originals of these documents and file which are in their possession.**

9. **The plaintiff avers that the 2nd Plaintiff was allocated Plot 218, Katampe District B7 in the FCT after fulfilling all the conditions required of him to acquire a land in the FCT. Copies of his application forms paid for and submitted to the Defendants, a copy of the Defendants acknowledgment of the 2nd Plaintiff's forms and fulfillment of all requirements, a copy of the approval of allocation, a copy of the offer of terms of grant/conveyance of approval, a copy of the 2nd Plaintiff's acceptance of the offer, and other approvals contained in Department of Land Administration, Ministry of Federal Capital Territory Abuja is herewith attached and marked as XIL 3a1 to a15. The documents shall be relied upon. The Defendants are put on notice to produce the originals of these documents and file which are in their possession.**

10. **The plaintiffs avers that an application to register a power of attorney dated the 25th July, 2009 donated to the 3rd Plaintiff, three copies of the power of attorney were submitted by its solicitors Adamu, Ahmed, Ibrahim & Co on the 23rd of March 2005. A copy of the said letter, copies of the power of attorney and receipt of payments dated 23rd March, 2005 hereby attached and will be relied upon.**

11. **The 1st Plaintiff avers that payment for the issuance of a new certificate in the Defendants' Re-Certification exercise dated 29th April, 2005 was paid for and all conditions fulfilled. A copy of the receipt of payment is hereby attached and will be relied upon.**

12. **The 1st Plaintiff avers that it caused its solicitors to write the Defendants' on the issue on the 26th of May 2011. A copy of the letter is hereby attached and will be relied upon.**

13. That the Defendants' had neither replied the 1st Plaintiff nor respondent to any of its letters.

14. The 1st Plaintiff avers that it is in physical possession of the land.

15. That the non-issuance of a recertified certificate of occupancy and registration of the submitted power of attorney has hampered the 1st Plaintiff's ability to develop the land."

As stated earlier, the evidence of claimants sole witness followed the above trajectory and in evidence PW1 tendered the following documents in evidence in proof of their case thus:

"1. The Power of Attorney between Ponya Ibrahim and Xtreme Idea Ltd (1st plaintiff) was admitted as Exhibit P1.

2. Receipt for Registration of Power of Attorney dated 23rd July, 2005 was admitted as Exhibit P2.

3. Deposit slip/receipt payment for recertification dated 29th April, 2005 was admitted as Exhibit P3.

4. Letter to the Minister, FCT, titled "Application to Register Power of Attorney" dated 23rd July, 2009 was admitted as Exhibit P4.

5. Letter to the Director of Lands dated 26th May, 2011 was admitted as Exhibit P5."

The narrative above situates that the 2nd claimant was the original allottee of the disputed plot who transferred his interest to 3rd claimant who then transferred to 1st claimant.

In evidence, the claimants did not precisely tender any offer of allocation to the disputed **Plot 128** to 2nd claimant, at least on the basis of the documents identified or streamlined above which were tendered in evidence. In paragraph 9 of the claim, the claimants pleaded this document of title and other title documents related to the allocation to the disputed plot and put the 1st and 2nd defendants on notice to produce the original file. They did not but rather than get Certified True Copies of the documents, they sought to tender photocopies of what are decidedly public documents. A file containing photocopies of these

pleaded documents was tendered in evidence but was rejected on the basis of the objection raised by 3rd defendant that since they were all public documents, the only admissible secondary evidence of the documents were Certified True Copies. The absence of certification rendered the documents inadmissible. The effect was that paragraph 9 of the claim at that point was not established by evidence.

Again on the evidence, there is nothing situating evidence to support the averment in paragraph 8 that the 3rd plaintiff acquired the disputed plot from the 2nd claimant. The Power of Attorney pleaded to support the relationship was equally not tendered in evidence. It is true that the Power of Attorney tendered vide **Exhibit P1** between 3rd claimant and 1st claimant clearly situates that it was donated in respect of the disputed Plot 128 but the Power of Attorney is obviously not the offer letter and in law it is not construed as an instrument of transfer or alienation. While it is conceded that it is often erroneously used or utilized as such, it is merely an instrument delegating powers to the Donee to stand in position of the Donor and to do the things he could do. I cannot put it any better than to quote, ***Ipsissima verba,*** the useful words of Pats Acholonu (JCA) (as he then was and of blessed memory) in **Ndukauba v. Kolomo (2001) 12 N.W.L.R. (pt 726) 117 at 127 par F.G,** where he stated as follows:

"It is erroneously believed in not very enlightened circles particularly amongst the generality of Nigerians that a Power of Attorney is as good as a lease or an assignment. It is not whether or not coupled with an interest. It may eventually lead to execution of an instrument for the complete alienation of land after the consent of the requisite authority has been obtained."

In the same vein, let me add that even before the pronouncement above, the Supreme Court in **Ude V. Nwara (1993)2 N.W.L.R (pt.278)638 at 644** instructively stated as follows:

"A power of attorney merely warrants and authorizes the donee to do certain acts instead of the donor and so it is not an instrument which confers, transfers, limits charges or alienates any title to the donee, rather it could be a vehicle whereby these acts could be done by the donee for and in the name of the donor to a third party. So even if it authorises the donee to do any of these acts to any person including himself, the mere issuance of such a power is not per se an alienation or parting with possession. So far

as it is categorized as a document of delegation, it is only after, by virtue of the Power of Attorney, the donee leases or conveys the property, the subject of the power, to any person including himself that there is alienation."

Similarly in **Ezeigwe V Awudu (2008) 11 NWLR (pt.1097) 158**, the Supreme Court per Onnoghen JSC (as he then was) stated as follows:

"Even if Exhibit A could be relied upon, it does not deprive the respondent of her title to the property; the document being nothing other than an irrevocable Power of Attorney – not a conveyance. In fact Exhibit "A" being an irrevocable Power of Attorney allegedly donated by the Respondent to the Appellant is a clear evidence or confirmation of the fact that title to the land in dispute resides in the Respondent, the donor of that power. The only document that could have proved any passing of that title to the Appellant would have been a conveyance or an assignment, none of which was said to have existed nor tendered in evidence in the case."

The above pronouncements are clear.

The bottom line therefore as we have demonstrated at some length is that the case of the claimants remains solely situated on the title or allocation to the 2nd claimant. That indeed is the very foundation of the case. The question that logically arises is whether they have made out a case to entitle them to the reliefs sought? In delivering a conclusive answer, we must now situate and evaluate the case made out by the defendants. Because of the interplay of facts in this case, I consider it necessary to first consider the case made out by the 3rd defendant/counter-claimant before considering the defence of 1st and 2nd defendants, the sole authority responsible for allocation of lands in the FCT. It is to be noted that this case as stated earlier, was initially filed against the 1st and 2nd defendants, the allocating authority, only. Indeed they were the ones who applied for the joinder of **3rd defendant/counter-claimant**. There Response to the competing claims, having made both allocations, is therefore important.

The case of 3rd defendant/counter-claimant is also fairly straightforward. The case can be situated within the confines of the following paragraphs of the defence and counter-claim. In the defence, the 3rd defendant averred thus:

"2. The 3rd Defendant denies paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14 and 15 of the Statement of Claim.

3. The 3rd Defendant in answer to paragraphs 6 and 7 of the Statement of Claim avers that it is his Late Father; Alhaji Abali Muhammadu (also known and referred to as Abali Maina) who was allocated Plot No. 218, Katampe District, Cadastral Zone B07 with File No: B0 10710 by the 2nd Defendant. Copies of his title documents, to wit:

i. The Offer Letter dated 09/04/02;
ii. The Acceptance of the Offer dated 24th May, 2022;
iii. The Certificate of Occupancy No: 1072w-17366-7406r-c74cu-10, dated 24th October, 2005;
iv. Survey Plan prepared by the Abuja Geographic Information System dated 2nd August, 2005; are hereby pleaded and shall be tendered at the hearing of this suit.

6. The 3rd Defendant avers that sequel to the death of his father some documents of the deceased father including the documents to the property in dispute were missing in the custody of the deceased and all efforts to trace them proved abortive.

7. The 3rd Defendant avers that sequel to the suit of the plaintiffs herein the 3rd Defendant applied for and was issued with the certified true copies of the documents pleaded in paragraph 3 above for litigation."

In the **counter-claim**, the 3rd defendant averred as follows:

"2. The Counter-claimant is the plaintiff in this counter claim while the original plaintiffs are described as 1st, 2nd and 3rd Defendants while the original 1st and 2nd defendants are described as the 4th and 5th Defendants to the counter-claim herein.

3. The Counter-claimant herein is the 1st son and traditionally the heir apparent and successor of Alh. Abali Maina (now deceased) the allottee of Plot No. 218, katampe district, Cadastral Zone: B7, FCT, Abuja the subject matter of this Counter-claim.

4. That sequel to the death of the said Late Alh. Abali Maina, all his personal assets and liabilities including the property subject matter of this suit to wit: Plot No. 218, Katampe district, Cadastral Zone: B7, FCT, Abuja became subject of inheritance which devolved on his heirs.

5. **The Counter-claimant avers that on the 23rd day of July, 2019 he was nominated by heirs of the said Alh. Abali Maina (the Late emir of Fika) to do all things necessary to defend the Land, subject matter of the suit herein for and on behalf of the entire heirs of the late Alh. Abali Maina'**

6. **The Counter-claimant avers that his late father; Alh. Abali Maina also known as Alhaji Abali Mohammadu is the valid owner of Plot No. 218, B7, Katampe district, FCT, Abuja.**

7. **The Counter-claimant avers further that his said Late Father; Alhaji Abali Muhammadu was allocated Plot No. 218, Katampe District, Cadastral Zone B7 with File No: B0 10710 by the Federal Capital Territory Administration (FCTA) the 3rd Defendant to this counter-claim. Copies of his title documents, to wit:**

   i. **The Offer Letter dated 09/04/02;**
   ii. **The Acceptance of the Offer dated 24th May, 2022;**
   iii. **The Certificate of Occupancy No: 1072w-17366-7406r-c74cu-10, dated 24th October, 2005;**
   iv. **Survey Plan prepared by the Abuja Geographic Information System dated 2nd August, 2005; are hereby pleaded and shall be tendered at the hearing of this counter-claim.**

8. **That the Ministerial approval to the allocation was equally granted by the office of the Minister of Federal Capital Territory (FCT) on the 24th day of October, 2005 thereby perfecting the said allocation.**

9. **The Counter-claimant avers that the land, subject matter of this suit was validly allocated to this late father, Alhaji Abali Muhammadu of 1, Fika Road, Emir's Palace, Potiskum, Yobe State by the Federal Capital Territory Administration (FCTA) and Ministerial Approval granted by the Minister of the Federal Capital Territory on the 24th day of October, 2005 as evidenced by the Certificate of Occupancy No. 1072w-17368-7406r-c74cu-10 with all necessary conditions under the law perfected to validate the said allocation."**

Here too as stated earlier, the evidence of the sole witness for the 3rd defendant/counter-claimant followed largely the structure of the above pleadings and in evidence he tendered the following documents:

"1. Certified True Copy (C.T.C) of Offer of Terms of Grant/Conveyance of Approval dated 9th April, 2002 was admitted as Exhibit D3.

2. Certified True Copy (C.T.C) of Acceptance of Offer of Grant of Right of Occupancy dated 24th May, 2002 was admitted as Exhibit D4.

3. Certified True Copy of Certificate of Occupancy together with C.T.C of the Survey Plan over Plot 218 was admitted as Exhibit D5."

The above evidence situates the undoubted allocation to the 3rd defendant of the disputed plot No. 218 which **claimants** also lay claim too. **Exhibit D3** dated 9th April, 2002 is the allocation or offer letter to the late Abali Maina which he accepted vide **Exhibit D4** and covered by the Certificate of Occupancy over the same plot dated 24th October, 2003 and admitted as **Exhibit D5**.

As stated earlier and at the risk of sounding prolix, the case by claimants was initially only against 1st and 2nd defendants and they (1st and 2nd defendants) then subsequently applied for joinder of 3rd defendant/counter-claimant on the basis that he also has a claim of right to the disputed plot 128 been claimed by claimants. When the 3rd defendant joined the case and filed a counter-claim, it joined the 1st and 2nd defendants in the original action as 4th and 5th Defendants in the counter-claim. This for me underscores the importance of the role of the FCT and the Minister FCT (1st and 2nd defendants) in the resolution of the present dispute.

As already situated, the 1st and 2nd defendants have conceded and rightly in my opinion that this is a case of **double allocation** of the same plot.

It is logical to hold that there cannot be concurrent ownership of the same disputed plot by two different parties. It is stating the obvious that under relevant extant laws and the land tenure system operational in the FCT, it is only the Honourable Minister FCT that has the power to allocate land. Indeed the 1st and 2nd defendants superintend over all lands in the FCT. If both parties are claiming title from a common grantor or the 1st and 2nd defendants, then the position taken or projected by them in response to the contested assertions or dispute will be **decisive**.

In the present scenario, the case presented by 1st and 2nd defendants is similarly straightforward. In paragraph 5 of the 1st and 2nd defendants defence, the following paragraphs are germane:

"5. The 1st and 2nd Defendants are not in position to admits averments contained in paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the Plaintiffs Statements of Claims and shall put the Plaintiffs to strictest proof of same during trial. However, 1st and 2nd Defendants maintain as follows that;

i. **It is true that the 2nd Plaintiff was allocated Plot No. 218, Katampe District B07 measuring about 2257.42sqm via Offer of Terms of Grant/Conveyance of Approval dated 28th January, 1999.**

ii. **The said Offer was accepted vide the Acceptance of Offer of Grant of Right of Occupancy within the Federal Capital Territory, Abuja.**

iii. **The same Plot 218, Katampe District was allocated to the 3rd Defendant vide Statutory Right of Occupancy dated 9th April, 2002 such creating issue of double allocation over the subject Plot.**

iv. **It is the issue of the double allocation that the authority is trying to resolve base on their standing policy of first-in-term all other things being equal.**

v. **Until this issue of double allocation is resolve it will not be tidy to allow the Plaintiffs or any of their agents, assigns or representatives to do anything or carry out transaction on the subject plot."**

The evidence of their sole witness is also equally in tandem with the pleadings above. In evidence she tendered the Certified True Copies of the following documents:

"1.The Certified True Copy (C.T.C) of Offer of Terms of Grant/Conveyance of Approval to 2nd plaintiff dated 28th January, 1999 was admitted as Exhibit D1.

2. C.T.C of Acceptance of Offer of Grant of Right of Occupancy No. MFCT/LA/97/05 561 (Exhibit D1) was admitted in evidence as Exhibit D2."

The above **Exhibit D1** is dated 28th January, 1999 and situates an allocation or letter of offer of grant/conveyance of approval to 2nd claimant with respect to the disputed plot 218 and by **Exhibit D2**, the 2nd claimant duly accepted the offer of grant. It is this same **plot 218** that was subsequently later allocated to 3rd defendant/counter-claimant on 9th March, 2002 vide **Exhibit D3**, about 3 years after the allocation to 2nd claimant. It is thus fairly obvious as captured by the evidence of DW1 from the allocating authorities, that this was a case of **"double allocation"** in which both 2nd claimant and 3rd defendant were allocated the same plot 218 at different times. Let me for the sake of clarity reproduce the evidence of DW1 as follows:

"3. That by virtue of my position, I know the subject matter very well and I am conversant with the facts of this case.

i. **That it is true that the 2nd Plaintiff was allocated Plot No. 218, Katampe District B07 measuring about 2257.42sqm via Offer of Terms of Grant/Conveyance of Approval dated 28th January, 1999.**

ii. **That the said Offer was accepted vide the Acceptance of Offer of Grant of Right of Occupancy within the Federal Capital Territory, Abuja.**

iii. **That the same Plot 218, Katampe District was allocated to the 3rd Defendant vide Statutory Right of Occupancy dated 9th April, 2002 such creating issue of double allocation over the subject Plot.**

iv. **It is this issue of the double allocation that the authority is trying to resolve base on their standing policy of first-in-term all other things being equal.**

v. **Until this issue of double allocation is resolve it will not be tidy to allow the Plaintiffs or any of their agents, assigns or representatives to do anything or carry out transaction on the subject Plot."**

Now this evidence of **double allocation** and the fact that the allocation to 2nd claimant was earlier in time was not really challenged or controverted in evidence by any other admissible evidence and the court in such circumstances is bound to accept such unchallenged evidence. The principle is settled that where evidence is unchallenged under cross-examination, the court is not only

entitled to act on or accept such evidence, but it is in fact bound to do so provided that such evidence by its very nature is not incredible. Indeed a trial court has little or no choice but accept the unchallenged and uncontroverted evidence placed before it, if it is not challenged, discredited and debunked. It remains good and credible evidence which should be relied on by the court who would in turn ascribe probative value to it. See **Adeleke V Iyanda (2001) 13 NWLR (pt.729) 1 at 22-23 A-C; Mankon V Odili (2010) 2 NWLR (pt.1179) 419 at 442 D-E; Ebeinwe V State (2011) 7 NWLR (pt.1246) 402 at 416 D**.

This critical unchallenged evidence coming from the **issuing authorities** cannot be discountenanced with, in the absence of credible counter-evidence.

Flowing from the above and predicated on the unchallenged evidence, it is thus clear that there are indeed two (2) allocations of the disputed plot 218 as follows:

1. **Exhibit D1** dated 28th January, 1999 is the offer of terms of grant/conveyance of approval of Plot No. 218 within Katampe District B7 to the **2nd claimant**. This as stated earlier was duly accepted by him.

2. **Exhibit D3** dated 9th April, 2002 is the offer of terms of grant/conveyance of approval of the same plot No. 218 within Katampe district to Maina Abani, the 3rd defendant/counter-claimant. This offer which equally accepted.

As already alluded to, I am in no doubt from the above that both claimants, 2nd claimant in particular and the 3rd defendant/counter-claimant were allocated the same disputed **plot 218**. In law as stated earlier, there cannot be concurrent ownership of the same plot by different persons. In the prevailing situation, the law is settled that where two or more competing documents of title upon which parties to a land dispute rely for their claim originate from a common grantor as in this case, the doctrine of priorities pursuant to the well-recognised maxim, *qui prior est tempare, potior est jure*, meaning that he who is first has the strongest right, dictates that the first in time takes priority. See **Atanda V Ajani (1989) 3 NWLR (pt.135) 745; Uzor V D.F (Nig.) Ltd (2010) 13 NWLR (pt.1217) 553 at 576 and Gege V Nande (2006) 10 NWLR (pt.989) 256**.

In this case on the evidence, **Exhibit D1** the allocation to **2nd Claimant** dated 28th January, 1999 was earlier in time to that allocated to the 3rd Defendant/Counter-claimant vide **Exhibit D3**which is dated 9th April, 2002 and clearly was issued nearly 3 years after the allocation to 2nd Claimant. On the

authorities, the allocation to 2nd claimant should and must take priority in the circumstances.

The 3rd Defendant in the final address argued that the doctrine of priorities should not apply because according to counsel, the doctrine contemplates or only applies where there are two competing documents that will be compared but that in this case, that it is only the 3rd Defendant that presented its title documents and that the claimants did not produce the title document of 2nd claimant to provide opportunity for the comparing of dates.

I am really not enthused by these submissions. It loses sight completely of the reality of **Exhibits D1** and **D2**, particularly **D1**, the Certified True Copy of the letter of Offer issued to 2nd claimant by 1st and 2nd defendants which he duly accepted vide **Exhibit D2**. Can the court play the ostrich and pretend that this document does not exist or was not presented in court, albeit by the **1st and 2nd defendants?**

What is interesting here is that **Exhibit D1**, the Offer of Terms of Grant/Conveyance of Approval is a **Certified True Copy** tendered by the 1st and 2nd Defendants. The Offer of Terms of Grant/Conveyance of Approval tendered by 3rd Defendant/Counter-claimant vide Exhibit D3 is equally a **Certified True Copy**. The certification of both documents (**D1 and D3**) was done by the **same person** or **the Deeds Registrar** from the offices of the 1st and 2nd Defendants.

In law both documents enjoy the presumption as to genuineness of certified copies under **Section 146 (1) of the Evidence Act**. The provision situates clearly that the court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorized in that behalf to be genuine, provided such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

Exhibits D1 and **D3** thus enjoy the same presumption under the purview of Section 146 (1). They are both public documents and certified by the same person, the Deeds Registrar who is duly authorized to exercise the powers of certification. The fact that 3rd defendant tendered **Exhibit D3** while **Exhibit D1** was tendered by 1st and 2nd Defendants and not claimants makes no difference to the application of the presumption under **Section 146 (1).**

The attempt by 3rd defendant to, as it were, ignore the existence of **Exhibit D1** clearly will not fly. Any conclusion or indeed submissions which is made by any party in disregard or denial to documentary evidence, in this case the unimpugned certified true copies of **Exhibits D1** and **D2**, cannot be seen to fly in the face of the accepted relevant document or documents. If it flies at all, it will be contradictory and perverse and the court must reject such submission.

No party is thus entitled to assume that it is within his exclusive province to make disconnected submissions or deductions when such conclusion depend much or entirely on documentary evidence; such submissions must reasonably reflect the contents of the document or documents in question as a whole so as to be seen as a true understanding of the contents. The bottom line is that **Exhibit D1** cannot be ignored by either the parties or the court.

It is a well known truism that a document when admitted in evidence speaks for itself and where any oral evidence on an issue is given in a case and there is cogent documentary evidence on the same issue, it is the duty of the trial judge to test the reliability of the oral evidence against the said documentary evidence. To put it in now familiar expression, it helps the trial judge to reach a fair finding by using the relevant document as a hanger on with which to assess the oral testimony. See **Kimdey V Gov. Gongola State (1988) 2 NWLR (pt.77) 445 at 473**.

On the whole, the doctrine of priority clearly operates in this case and enures in favour of the claimants. The claimants and in particular 2nd claimant acquired his interest over the disputed plot 128 before that of 3rd Defendant/Counter-claimant. As stated earlier, there cannot be concurrent ownership of the disputed plot by different persons.

The further contention by 3rd Defendant/Counter-claimant that the 2nd claimant was not diligent in processing his title up to the grant of a right of occupancy, but that the 3rd defendant was diligent by obtaining ministerial approval and the issuance of the Certificate of Occupancy and as such what claimants have is an equitable interest which cannot defeat the legal interest of 3rd defendant with respect completely lacks legal basis and stems from a lack of proper understanding of the applicable provisions of the Land Use Act (LUA).

Firstly, let me state that in law a Certificate of Occupancy such as **Exhibit D4** issued to 3rd defendant is not conclusive evidence of a right or valid title to land. It is at best only a prima facie evidence of such right and may in appropriate

cases be effectively challenged and rendered invalid and null and void. See **Olotunde V Adeyoju (2000) 10 NWLR (pt.676) 562 at 587 C-D**.

Secondly, it must be pointed out that what was granted to 2nd claimant vide **Exhibit D1** is a "Right of Occupancy" within the purview of Section 5 of the Land Use Act. The document speaks for itself conveying the **"Honourable Ministers approval of a Grant of Right of Occupancy in respect of plot of about…"**

It is also to be noted that on the evidence, the claimants have at different times vide **Exhibits P4** and **P5** attempted to register the Power of Attorney granted in respect of the land with 1st and 2nd defendants but not much could be done because of the issue of double allocation.

In **Exhibit P5** dated 26th May, 2011 and received by 1st and 2nd defendants on 31st May, 2011, the claimants stated as follows:

"… Our client was granted a Statutory Right of Occupancy in respect of Plot of about 2257.42m^2 (Plot No. 218) within Katampe District B7 by letter of Offer Reference No. MFCT/LA/97/OS 561 dated 28th January 1999 through a Power of Attorney dated 18th June 2003 (photocopy attached).

During recertification exercises, our client submitted a Power of Attorney or registration (see copy of Deposit slip No.04701 of 23/3/05 attached) and all documents for recertification. He was informed at that time that there was double allocation on the land and that AGIS was in the process of resolving the issue. Since then he had been making efforts to get this matter resolved in order for him to develop the land, but up till now, he has not received any response from AGIS.

We are therefore writing to request that this matter be resolved so that our client can complete the recertification and continue development on the land.

While we await your response, please accept the assurance of our best regards."

The 1st and 2nd defendants in their defence vide **paragraph 5 (iii)-(v)** clearly alluded to the fact that because of the "double allocation" on the land, the claimants were not allowed to do anything or carry out any transaction on the land. **Paragraphs 5 (iii)-(v)** states as follows:

"iii. The same Plot 218, Katampe District was allocated to the 3rd Defendant vide Statutory Right of Occupancy dated 9th April, 2002 such creating issue of double allocation over the subject Plot.

iv. It is the issue of the double allocation that the authority is trying to resolve base on their standing policy of first-in-term all other things being equal.

v. Until this issue of double allocation is resolve it will not be tidy to allow the Plaintiffs or any of their agents, assigns or representatives to do anything or carry out transaction on the subject plot."

It is therefore really difficult to situate on the peculiar facts of this case how the allocation of claimants metamorphosed into an equitable interest when the allocating authority, because of the "double allocation", refused to allow parties to do anything or carry out any transaction on the land. The case of **Eheran & ors V Aderonpe (2008) LPELR – 3711 (CA)** cited by 3rd defendant is thus distinguishable as the facts of that case is not the same with that in the extant case.

Thirdly, this Right of Occupancy vide **Exhibit D1** on the pleadings has not been revoked at anytime. Indeed while the Governor of a State or in the case of the FCT, the Minister can revoke a right of occupancy, the revocation must be for overriding public interest and public purposes. Any revocation outside the purview or as prescribed under **Section 28** of the Act is against public policy and the intention of the Act and will be declared null and void. See **Dantsoho V Mohammed (2003) 6 NWLR (pt.817) 457 at 482; 483 D-E**. Accordingly a revocation ought to precede a subsequent grant under **Section 5 (2),** even where the prior grant is a customary right of occupancy vide **Section 28 (3)**. See **Dantsoho V Mohammed (supra) 457 at 485 – 486 C**.

In this case, there was no revocation, and so there cannot legally be another allocation or offer of grant (**Exhibit D3**) to 3rd defendant in the face of the existing grant to 2nd claimant vide **Exhibit D1**.

The grant of a Right of Occupancy like **Exhibit D3** to 3rd defendant without revoking the earlier Right of Occupancy vide **Exhibit D1** to 2nd claimant does not amount to the revocation of the earlier existing Right. This later grant does not also give life or validate Exhibit D3 by any stretch of the imagination. The grant of any Right of Occupancy done in violation of the provisions of **Section**

28 of the Land Use Act is invalid, null and void and confers no title. See **CSS Bookshops Ltd V Registered Trustees of Muslim Community in Rivers State (2006) 11 NWLR (pt.992) 530 at 567 – 568 H-F**.

It is therefore difficult to situate the superiority sought to be attached by 3rd defendant to the acquisition of the certificate of occupancy predicated on a flawed and invalid Right of Occupancy which was issued when there was already in existence a Right of Occupancy over the same land which has not been revoked. The acquisition of the Certificate of Occupancy does not and cannot validate a flawed instrument of grant, **Exhibit D3** which in law is patently invalid or ineffective. See **Ejilemele V Opara (2003) 9 NWLR (pt.826) 536 at 557 E**.

Here again, it is apposite to state the familiar legal truism that you cannot put something on nothing and expect it to stand. The inevitable collapse of putting something on nothing is only a natural consequence. That unfortunately is the fate of **Exhibit D3** and **Exhibit D5**.

On the whole, the claimants and in particular, 2nd claimant by a confluence of clear unchallenged evidence, both oral and documentary, has established his entitlement to the declaration sought under **Relief (1)**. **Relief (1)** has merit and is availing.

Relief (2) seeks for an Order of this court directing the 1st and 2nd Defendants to issue a Certificate of Occupancy in respect of Plot 218, Katampe District B7 to the plaintiff and do every ancillary (sic) to the plaintiffs' rights over the said plot of land.

Now the issuance of a Certificate of Occupancy under the land tenure legal regime is not done as a matter of course or granted automatically upon grant of offer of terms of grant/conveyance of approval. The certificate is ultimately issued on fulfillment of clear and set legal parameters.

I have carefully, again read the pleadings and evidence, and it is difficult to situate where they, claimants, made out a case with respect to fulfillment of all requirements including necessary payments for issuance of certificate of occupancy. **Exhibit P2** is a receipt in the sum of N52, 000 (Fifty Two thousand Naira) for Registration of Power of Attorney. **Exhibit P3** is N10, 000 (Ten Thousand Naira) payment for recertification. There is nothing in the pleadings or evidence situating or showing if any bill was issued for the issuance of the certificate of occupancy and whether it has been paid.

In paragraphs 10-13, the claimants pleaded as follows:

"10. The plaintiffs avers that an application to register a power of attorney dated the 25th July, 2009 donated to the 3rd Plaintiff, three copies of the power of attorney were submitted by its solicitors Adamu, Ahmed, Ibrahim & Co on the 23rd of March 2005. A copy of the said letter, copies of the power of attorney and receipt of payments dated 23rd March, 2005 hereby attached and will be relied upon.

11. The 1st Plaintiff avers that payment for the issuance of a new certificate in the Defendants' Re-Certification exercise dated 29th April, 2005 was paid for and all conditions fulfilled. A copy of the receipt of payment is hereby attached and will be relied upon.

12. The 1st Plaintiff avers that it caused its solicitors to write the Defendants' on the issue on the 26th of May 2011. A copy of the letter is hereby attached and will be relied upon.

13. That the Defendants' had neither replied the 1st Plaintiff nor respondent (sic) to any of its letters."

It is clear from the above, that in real terms, the payments referred to above relates to the registration of the Power of Attorney. No more. If there was a payment for issuance of a **"new certificate of occupancy,"** no evidence of such payment was tendered. Indeed the letter written by claimants vide **Exhibit P5** dated 26th May, 2011 only alluded to the failure to register their power of attorney and not the failure to issue them with a Certificate of Occupancy. Indeed in paragraph 13 above, the claimants stated that the 1st and 2nd defendants did not respond to their letter. In any event, if there was double allocation, it would appear as stated by 1st and 2nd defendants, that everything on the disputed plot was suspended or put in abeyance. I leave it at that.

It is therefore obvious that in such patently fluid and unclear situation, the court has not been put in a commanding height to grant **Relief (2).** Having found or declared for the validity of the **allocation to 2nd claimant**, they can now take proper steps to do the needful as allowed by law and procedure to fulfill all necessary requirements to get the certificate of occupancy over the disputed plot 218. **Relief (2)** will accordingly be struck out.

Now with respect to the **Counter-claim** and the issue raised and which I indicated will be taken together, it is obvious that the findings on the substantive action provides both factual and legal basis to determine whether the Reliefs sought in the counter-claim are availing.

Now having found that the claimants particularly the 2nd claimant has established that it has a prior better and existing allocation or offer of grant to the disputed **plot 218** before the purported allocation of an offer of grant of the same plot 218, to the 3rd defendant, it follows that the subsequent allocation to the 3rd defendant and the issuance of a certificate of occupancy predicated on the flawed grant of terms are all invalid, null and void.

As stated severally, the allocating authority concedes that this is a case of double allocation. They also concede and rightly too, that the first in time in such situations will take or have priority and this they made clear to 3rd defendant with an offer for an alternative plot. As stated earlier, when this case was instituted, the 3rd defendant was not a party. It was the 1st and 2nd defendants (who were 4th and 5th defendants in the counter-claim) who applied to join the 3rd defendant as a party.

Let me here quote the evidence of the witness of 4th and 5th defendants, in response or defence to the counter-claim as follows:

"5. That I further stated that the Counter-claimant was not aware of the allocation of this Plot 218, Katampe district B07, to them not until the claimant in this suit instituted this matter and for purpose of tidiness and wholesome dispensation of justice, the 4th and 5th Defendants to the counter-claim decided to joined them in the suit.

8. That because they are not aware of this allocation, they have not carried out any responsibility as required by law on the said plot. In fact, they disputed the fact that they have any allocation initially until we availed them the facts thereto.

9. That the 4th and 5th Defendants to the counter-claim further informed them after the necessary appraisal of the facts of the matter and to the fact they were later in time that they will be entitle to alternative allocation by following the necessary laid down procedure.

10. That this necessary laid down procedure to be entitled to alternative allocation among other things include verification of the Counter-Claimant to be sure that they are the right person to deal with and that they are the same person who applied and was validly made allocation to."

I need not add to the above.

Relief (i) on the counter-claim fails.

With the failure of **Relief (i)**, **Relief (ii)** seeking a declaration that the illegal possession of the land by 1st defendant to this counter-claim constituted a **trespass** to the said piece of land must also fail.

Trespass in law is any infraction of a right of possession into the land of another be it ever so minute without the consent of the owner is an act of trespass actionable without any proof of damages. See **Ajibulu V Ajayi (2004) 11 NWLR (pt.885) 458**.

The claim of trespass is therefore rooted in exclusive possession. For a party to succeed in trespass, he needs to prove or show in order to succeed that he is the owner of the land or that he has exclusive possession. On the evidence, the 3rd defendant never crossed this threshold or met any of this established criteria. **Relief (ii)** fails. With the failure of **Reliefs (i)** for title and **Relief (ii)** for trespass, **Reliefs (iii), (iv), (v)** and **(vi)** for damages for trespass, perpetual injunction, order for possession and cost of action all predicated on successful proof of legal title and or right of possession to the disputed plot all must fail. These ancillary reliefs are not availing. The legal principle being once the principal is taken, the adjunct is also taken away. See **Adegoke Motors V Adesanya (1989) 3 NWLR (pt.109) 250 at 269**.

With the failure of the substantive reliefs in the counter-claim, the authorities enjoins the court to now determine the alternative claim or Relief. The principle is settled that where a claim is in the alternative, the trial court will first of all consider whether the principal or main claim ought to have succeeded. It is only after the court has found that it could not for any reason grant the principal claim that it would consider the alternative claim. See **Newbreed Organisation Ltd V Erhomosele (2006) 5 NWLR (pt.974) 499 at 544 D-C**.

In this case, the alternative reliefs read thus:

"(vii.) AN ORDER of this Honourable Court awarding the sum of One Hundred Million Naira (N100, 000, 000) only against the Federal Capital Territory Administration and the Minister of FCT (the 1st and 2nd defendants to this counter-claim) being the current value of the land subject matter of this suit, validly allocated to the counter-claimant by their offices.

(viii.) THE COST of this suit which is N2, 000, 000 (Two Million Naira) only against the 1st and 2nd defendants to this counter-claim."

Now in this case, I have again gone through the entire pleadings and evidence of 3rd defendant and I cannot situate where the current value of the disputed land was pleaded and the basis for the valuation. Again no valuation report was tendered and nobody was produced in evidence to talk about the current value of the property.

The sole witness for the 3rd defendant/counter-claimant was the **former driver** to the deceased Emir. He never said he was a valuer and did not state in the evidence that he valued the property at anytime.

On the whole, in the absence of pleadings on the issue of valuation and also a complete absence of evidence on the issue, the court obviously will not engage in an idle exercise of speculation on the current value of the property. **Relief (vii)** fails together with **Relief (viii)** for cost against 4th and 5th defendants.

In conclusion and for the avoidance of doubt, the 1st issue raised for determination with respect to the substantive claims of claimants is answered substantially in the positive in favour of claimants. With respect to the issue raised in relation to the counter-claim, it is answered wholly in the negative. The claimants and in particular 2nd claimant has established it has a better title and right of possession over the disputed **plot 218**.

In the final analysis, I accordingly make the following orders:

ON PLAINTIFFS CLAIMS:

1. **It is hereby declared that the 2nd plaintiff is the bona fide lawful allotee of plot No. 218, measuring 2, 257.42sq meters within Katampe District B7 in the Federal Capital Territory.**

2. **Relief (2) is struck out.**

ON THE 3RD DEFENDANTS COUNTER-CLAIM

The 3rd Defendant's Counter-claim fails in its entirety and is hereby dismissed.

……...
Hon. Justice A.I. Kutigi

Appearances:

1. ***Lagi Innocent, Esq., R.C. Nweke, Esq., and Judith Ibi for the Claimants and 1st – 3rd Defendants in the Counter-claim.***

2. ***Bolaji Yusuf, Esq., for the 1st and 2nd Defendants in the main Action and 4th and 5th Defendants in the Counter-claim.***

3. ***Felix Akin Akintola, Esq., with Ayobami Agbebi, Esq., for the 3rd Defendant/Counter-claimant.***